



This document is scheduled to be published in the Federal Register on 08/17/2012 and available online at <http://federalregister.gov/a/2012-20147>, and on FDsys.gov

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

Docket No.: 111012619-2294-04

RIN 0691-AA81

International Services Surveys and Direct Investment Surveys Reporting

AGENCY: Bureau of Economic Analysis

ACTION: Notice of Clarification

SUMMARY: The Bureau of Economic Analysis (BEA) issues this document to clarify for the public a rule BEA published in April 2012 that set out new procedures BEA will follow to collect data on international trade in services and direct investment surveys. The surveys are provided for by the International Investment and Trade in Services Survey Act (the Act) and the Omnibus Trade and Competitiveness Act of 1988. Specifically, BEA clarifies that the previously issued rule does not have retroactive effect, and that those entities required to complete surveys that BEA is currently conducting based on rules creating those surveys – the 2011 BE-11, 2011 BE-15, 2012 BE-12, 2012 BE-29, 2012 BE-120, and all 2012 quarterly surveys – must still complete those surveys.

DATES: [insert date of publication].

FOR FURTHER INFORMATION CONTACT:

David H. Galler, Chief, Direct Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail David.Galler@bea.gov or phone (202) 606–9835.

SUPPLEMENTARY INFORMATION: The International Investment and Trade in Services Survey Act (the Act) and the Omnibus Trade and Competitiveness Act of 1988 both require BEA to collect comprehensive and reliable information on international trade in services and direct investment from all U.S. persons coming within the reporting requirements. For many years, BEA conducted these surveys only after implementing the surveys through notice and comment rulemaking procedures. *See, e.g.,* Direct Investment Surveys: BE-12, Benchmark Survey of Foreign Direct Investment in the United States at 76 FR 79054 (December 21, 2011) or International Services Surveys: BE-150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions at 77 FR 10958 (February 24, 2012). Issuing the surveys using the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553 (APA) provided all potential filers with constructive notice of the surveys as well as of their requirement to complete them. *See* 44 U.S.C. 1507 (filing a document with the **Federal Register** “is sufficient to give notice of the contents of the document to the person subject to or affected by it”). However, issuing surveys through notice and comment was not required by statute. Additionally, over time BEA found that going through the notice and comment requirements of the APA to prepare and issue surveys on a routine basis was time-consuming, and determined that it could collect such information just as, or perhaps more, efficiently by issuing the surveys through notices, rather than through individual rulemakings, and by informing respondents directly of the need to complete the surveys. *See* 77 FR 772 (January 6, 2012).

To make this change, on April 24, 2012, BEA published in the **Federal Register** a final rule titled, “International Services Surveys and Direct Investment Surveys Reporting,” 77 FR 24373. That rule amended BEA’s regulations at 15 CFR Parts 801-807, and stated that BEA will no longer issue most surveys required under the Act or the Omnibus Trade and Competitiveness Act

of 1988 following notice and comment rulemaking procedures under the APA. BEA will now, going forward, issue notices of its surveys in the **Federal Register** and individually to U.S. persons required to complete the surveys. *See* 15 CFR 801.3.

The purpose of this notice is to clarify to respondents that the final rule did not alter any pre-existing response obligations; that is, the rule amending BEA's regulations at 15 CFR Parts 801-807 does not have retroactive effect. We also note that the APA generally prohibits an agency from implementing a rule with retroactive effect. Direct investment and international trade in services surveys that BEA is currently conducting will continue to operate under the regulations established under their most recent rulemaking action prior to April 24, 2012. For example, entities required by former 15 CFR. 806.14 to complete the BE-11 Annual Survey of U.S. Direct Investment Abroad (see 75 FR 80294) for fiscal year 2011 are not freed of that obligation until they receive notice from BEA of a new BE-11 survey. The new procedures for implementing surveys through notices in the **Federal Register** and through direct notices to respondents will be used only for surveys issued *after* the April 24, 2012 final rule.

Accordingly, BEA's new survey procedures only apply to surveys it will issue in the future, not to those that it issued prior to April 24, 2012 following notice and comment rulemaking according to the APA.

Dated: August 9, 2012.

Joel D. Platt,

Acting Director, Bureau of Economic Analysis

[FR Doc. 2012-20147 Filed 08/16/2012 at 8:45 am; Publication Date: 08/17/2012]